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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 03 2011

IN RE: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a psychiatrist. The petition documents identify the petitioner as a staff child and adolescent psychiatrist and [redacted] The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must clearly establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

We note that the petitioner has, throughout the course of this proceeding, submitted thousands of pages of documentation. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Commr. 1989).

The petitioner filed the Form I-140 petition on April 1, 2009. In a statement submitted with the initial filing, counsel contended that the petitioner

> should not be required to go through the labor certification process, because this process is not able to take into consideration the unique skills that he has developed as a psychiatrist, the tremendous national impact of the research work that is done, and the reputation that [he] has sustained amongst his peers nationally.

Elsewhere in the same statement, counsel claimed that the petitioner

> is an outstanding psychiatrist at the top of his field with extraordinary abilities and talents which he has illustrated time and again through his significant work. Additionally, the support letters written on [the petitioner's] behalf show that [the petitioner] is one of the most talented psychiatrists in the field throughout the nation.

We will consider the witness letters elsewhere in this decision. All of these assertions, and others in the record, contain claims of objective fact, for which the petitioner must provide impartial evidentiary support. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits copies of several published articles, book chapters, and book reviews that the petitioner wrote or co-wrote. Counsel states that the petitioner's "work has been cited numerous times by physician-scientists across the world." The petitioner submits a list of citing articles, claiming between one and six citations for five of his articles, for a total of 17 citations (an average of about three citations per article). The petitioner submitted copies of 13 of the 17 listed articles (three of which do not discernibly pertain to child psychiatry, and one of which is a self-citation by the petitioner's co-author), along with a copy of an article from *Psychiatric News*, reporting on a survey that the petitioner and nine other researchers conducted. The survey concerned parental leave policies for psychiatry residents, and as such it amounted to a report on personnel issues within the field rather than research in that field.

The petitioner submitted evidence of his involvement in educational activities, including his preparation of electronic slide presentations and self-assessment questionnaires. We note this evidence, but it does not explain why it is in the national interest for the petitioner to be among those engaged in such activities. Educational work of this kind is not self-evident proof of eligibility for the waiver.

The record contains several witness letters written in support of the petition in March 2009. [redacted] (where the petitioner was a visiting researcher in 2003 and early 2004), stated that the petitioner's "critical roles at these prestigious institutions [i.e., [redacted] is a testament to [the petitioner's] exceptional ability." [redacted] discussed the petitioner's credentials as a peer reviewer, editor, author, member of associations, and "recipient of numerous honors and distinctions. . . . The impressive number of awards presented to [the petitioner] is a testament to his stature in the field." [redacted] asserted that the petitioner's work has earned him

"an international reputation within the medical community," but he did not discuss any details of the petitioner's clinical or research work that led to that claimed reputation.

[redacted] stated that the petitioner "is a member of a small class of needed physicians as a psychiatrist, and he is a member of an even smaller class of high demand specialists with expertise in treating pediatric populations suffering from mental illnesses and behavioral disorders." A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *See Matter of New York State Dept. of Transportation* at 215, 218. There exists a statutory provision at section 203(b)(2)(B)(ii) of the Act for certain physicians when the Department of Health and Human Services has officially designated a shortage area, but the petitioner has made no attempt to follow the provisions set forth in that subsection of the Act, or to conform to the corresponding regulatory requirements at 8 C.F.R. § 204.12.

Regarding the petitioner's individual merits, [redacted] stated that the petitioner's "work is so outstanding that it has been cited numerous times by other scientists and has even received media attention." [redacted] provided no details as to the number of citations or the extent or context of the "media attention." [redacted] stated that the petitioner "has produced, and continues to produce, novel scientific work that is essential to the treatment and diagnosis of serious psychiatric disorders in adult and pediatric populations," but he did not provide any specific details about that work except to list some of the disorders that afflict the petitioner's patients, such as "ADHD, autism, bipolar disorder, depression, schizophrenia and other serious conditions."

[redacted], stated: "I base my evaluation of [the petitioner] on his professional accomplishments and a review of his CV, publications, and presentations." [redacted] did not state that he had collaborated with the petitioner, but his *curriculum vitae*, and that of the petitioner, lists the two as co-authors of a 2008 book chapter.

[redacted] called the petitioner "one of the leading experts in the field of child and adolescent psychiatry" and credited him with "innovative contributions . . . in the treatment areas of ADHD and major depressive disorder. For example, [the petitioner] has studied the efficacy and safety of non-stimulant medications in ADHD, including atomoxetine in pre-school children, modafinil and extended release guanfacine in school-age children with ADHD." Noting the petitioner's authorship of textbook [redacted] claimed, without proof or elaboration, that "only established experts in the field like [the petitioner] are asked to author book chapters."

[redacted] who is also president of the [redacted] barely mentions the petitioner at all, apart from a passing nod to the petitioner's "impressive CV, presentations, and publications." [redacted] devotes the bulk of his letter to general arguments and claims about a "critical national shortage of child and adolescent psychiatrists."

[redacted] stated:

> [The petitioner] has reached a level of uncommon expertise in his field. His reputation is well-known in the psychiatry community and his exceptional clinical skills are highly sought after to treat some of the most complex behavioral disorders.
>
> [The petitioner] has distinguished himself in the field of child and adolescent psychiatry by demonstrating an extraordinary ability to perform the most innovative diagnostic and treatment procedures. For example, [the petitioner] is one of the country's foremost experts in treating patients with Attention Deficit Hyperactivity Disorder (ADHD). . . . [The petitioner] has successfully diagnosed and treated some of the most complex cases of ADHD, time and again, despite the recognized difficulty in deciphering its symptoms with other disorders.

Regarding the petitioner's research work, [redacted] stated:

> [The petitioner] In a 3-year long comorbidity study that he conducted in India from 1998-2001, [the petitioner] . . . reported that there was a statistically significant difference between bipolar-1 and major depressive disorder (recurrent) with regard[] to duration of current episode at the time of presentation. This finding has public health significance underlying the need for early detection and intervention in recurrent depressive disorder in India. . . . He has followed up this research there with numerous psychopharmacological trials in the United States that have researched the efficacy and safety of various new psychopharmacological compounds in ADHD, major depressive disorder, schizophrenia and generalized anxiety disorder.

[redacted] stated that the petitioner's conference presentations, book chapters, and "expert opinion articles" demonstrate the petitioner's standing in his field.

[redacted] at [redacted] and also a professor at [redacted], stated:

> One of the numerous areas in which [the petitioner] is recognized in the child psychiatry community is for his abilities in diagnosing and treating major mood disorders including Major Depressive Disorder (MDD) among children and adolescents. . . .
>
> [The petitioner] has not only honed clinical expertise in treating adolescents suffering from MDD, but has also been recognized for his research expertise in the area of MDD. [The petitioner] has been able to develop some new research data on the impact of comorbid ADHD in Major Depressive Disorder. . . . [A forthcoming research paper by the petitioner] **is the first time in the field of child and adolescent psychiatry that an effectiveness-based comparison of various treatment options has been done in adolescents with comorbid depression and ADHD.**

> Furthermore, [the petitioner], along with his colleagues, has devoted his time and resources in identifying some innovative diagnostic methodologies as well as treatment options for Major Depressive Disorder (MDD). For example, he is researching the efficacy and tolerability of Selegiline transdermal patch for depression in adolescents. This study in adolescents could lead on to understanding the antidepressant effects of a monoamine oxidase inhibitor. . . . This will also open up avenues of utilizing a different and probably a more precise route of antidepressant delivery. Another area of groundbreaking development is the utilization of videoconferencing in diagnosing children with depression with child depression rating scale . . . [which] can take child psychiatry into the remote areas of the country and improve access to care. . . . [The petitioner's] findings have thus already influenced other medical researchers, and [they] will benefit countless patients nationwide as well as instigate better patient management.

(Emphasis in original.) [redacted]

> [The petitioner] is a physician-scientist of the highest order. [The petitioner's] reputation in the field for his superior clinical and research work has resulted in his receipt of numerous awards and distinctions of national significance during his career. In recognition of [the petitioner's] research work [redacted] has cited to [the petitioner's] publications. . . . That [redacted] the leading nationally funded center for research, has cited to [the petitioner's] work is testament to the importance and significance of the work. Furthermore, [the petitioner] is the recipient of two psychopharmacology travel fellowships from the [redacted] and the [redacted] That [the petitioner] was awarded the prestigious distinction twice is a truly objective evidence of his exceptional ability.

The above claims illustrate a flaw found in many of the witness letters. The witnesses declare the petitioner's achievements to be, in and of themselves, clear evidence of the petitioner's superior standing in his field, while providing no documentary evidence to show that those achievements are as significant as the witnesses claim. The petitioner has, for instance, submitted nothing from the [redacted] to show that citation of a researcher's work "is testament to the importance and significance of the work." Likewise, the petitioner has submitted nothing from either the [redacted] to show that a travel fellowship from either institution is a "prestigious distinction." Witnesses have simply asserted, as brute facts, that the petitioner's involvement in writing articles, making presentations, and teaching students are each hallmarks of distinction rather than routine duties within academia. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In the face of the hyperbolic claims found in many witness letters, it is not only reasonable but necessary to expect strong and specific documentary evidence in support of such claims. It cannot

suffice to point to a particular diagnosis or conference presentation and declare it to be beyond the capabilities of most psychiatrists or child psychologists.

The opinions of experts in the field are not without weight and we have considered them above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The petitioner documented several job offers for college faculty positions, and clinical positions with private practices. The petitioner did not show that these offers distinguish him from other qualified professionals who seek positions in his field.

A section of the petitioner's initial submission bears the title [redacted] the at times hyperbolic language in the aforementioned letters, it is instructive to examine this evidence.

The first exhibit in this section is an electronic mail message informing the petitioner of his selection "as [redacted] for 2008," and inviting the petitioner to attend [redacted]" The initials [redacted]' The message states "[w]e are pleased to welcome you into the field as an educator and teacher of psychiatry," indicating that, as of 2008, a national association considered the petitioner to be entering that field (rather than an established figure or leader in the field). Background documentation makes it clear that the fellowship is for "trainees," specifically "residents" and "fellows" "who have a supporting recommendation from their training director." Other [redacted]materials show that the petitioner was a 2007 [redacted] in a "program . . . open to residents and fellows" still undergoing "training."

The next exhibit indicates that the petitioner won [redacted] for [redacted] being the [redacted] An accompanying electronic mail message informed the petitioner that he "will be honored . . . alongside other student and resident award winners." Again, this award, in context, is for a trainee. In his own remarks in accepting the award, the petitioner acknowledged that the award was "for the most outstanding paper by a child psychiatrist in training." We do not ignore this award, which clearly recognized the quality of the petitioner's work, but we also cannot ignore that the beneficiary received a "training" award a matter of months before he filed a petition that attempts to portray him not as a promising student, but as an established and widely recognized leader in his field.

The remaining "honors, awards and distinctions" are from even earlier than those described above, and consist of such things as grants to cover the expense of traveling to various professional conferences. The record does not show that the beneficiary has earned any honors, awards or distinctions when compared to fully qualified psychiatrists or psychologists, instead of fellows, residents or other trainees. If these materials are the best available evidence of the petitioner's claimed standing in the field of psychiatry, then we must consider those claims to be highly exaggerated.

We acknowledge documentation of the petitioner's involvement in various clinical trials. These trials are one means of conducting medical research, but the available documentation shows only that the petitioner is active in such research. It does not inherently establish the importance of the petitioner's research relative to the efforts of countless other researchers in the same field.

On August 28, 2009, the director issued a request for evidence, instructing the petitioner to "submit additional evidence that the benefits of your proposed employment will be national in scope" and that "you had a degree of influence on your field that distinguishes you from other pediatric & adolescent psychiatrists." The director requested evidence of citation of the petitioner's published research, and advised that "ordinary patient-treatment duties" do not establish influence in the field.

In response, counsel stated that the petitioner "has published and presented in many of the top forums in the field of psychiatry." Although witnesses had previously claimed that the petitioner's reputation was evident from the frequent citation of the petitioner's published work, the petitioner and counsel retreated from that claim once the director requested documentary evidence of those citations.

Instead of submitting the documentary evidence that the director requested, the petitioner submitted new witness letters. As we have already noted, witness letters are helpful but do not always present a complete or accurate picture of a given alien's contributions or standing in the alien's field.

[redacted] in his second letter, contended that the petitioner "has greatly distinguished himself as both a clinical physician as well as an academic researcher." [redacted] praised the petitioner's skills as a clinician and as a researcher, but offered few specifics except to state that the petitioner "has . . . been instrumental in initiating a **national standardized psychopharmacology curriculum** that has positively **changed the way child psychiatry is taught in leading medical institutions in the United States**" (emphasis in original). Prof. Wilson provided no evidence to support this claim.

The petitioner submitted an April 7, 2009 letter from [redacted] The body of this letter is almost identical to that of [redacted] March 9, 2009 letter submitted earlier. That two witnesses on opposite coasts of the United States have provided essentially the same letter proves that the letters are not the "independent testimonials" that counsel claims. Further, the petitioner's submission of such similar letters from two different witnesses raises questions about all of the witness letters, how the petitioner obtained them, and who actually wrote them. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

[redacted] stated: "I am very much aware and appreciative of the importance of [the petitioner's] scientific research. . . . This research has had an extensive influence on the treatment of various psychiatric disorders that impair the quality of life including Schizophrenia and Attention-Deficit/Hyperactivity Disorder (ADHD)." [redacted] stated that one study, "[redacted] "has been deemed so important and consequential that it has been funded by [redacted] contended that the study "has had a profound impact on the pharmacological treatment approaches in patients with schizophrenia" and "will have a huge impact on my own clinical practice," but he did not elaborate or even explain the petitioner's role in the above-named project.

The next letter is from [redacted] whom counsel called an independent witness despite the petitioner's recent stint at the Mayo Clinic. [redacted] stated:

> [The petitioner] is regarded today as a leading expert in subspecialty areas of pediatric psychology, particularly Attention Deficit-Hyperactivity and Mood Disorders, and the comorbidity of these two complicated disorders. [The petitioner] is a top clinical research with solid experience in this area, for which his is a much sought-after professional in the United States. One of his research studies that had wide-ranging ramifications involved an evaluation of the impact of co-existing ADHD in adolescent patients with Depression. The fact that this study . . . was funded [redacted] points . . . to the relevance of this topic of research and practice throughout the country. In this landmark study, [the petitioner] and colleagues compared the effects of both [redacted] in depressed adolescents with comorbid ADHD. The results from this study have had a widespread influence in the management of such comorbid childhood psychiatric disorders.

[redacted] does not elaborate or describe the "widespread influence" of the petitioner's research, or explain how he knows this influence to be widespread if no evidence exists to quantify that influence.

[redacted] stated that the petitioner's "research really has a profound impact on clinical practitioners in this area. It has shed new light on an area of major importance and can directly lead to improvements in management of such complex cases." [redacted] claims that the petitioner's work has "in my opinion, **propelled him to the very top of his medical specialty**."

The above witnesses, like many others, simply declared the petitioner's work to be influential and left it at that, while also claiming that factors such as federal grant funding are inherently hallmarks of the excellence and importance of the petitioner's work. The petitioner has submitted nothing from [redacted] to describe the grant funding process or otherwise corroborate third-party claims about such funding.

The petitioner submits a test booklet from [redacted] self-assessment examination. The cover page names the petitioner as one of fourteen members of the

Examination Editorial Board. The two co-editors are [redacted] and [redacted] whom counsel had identified as independent witnesses.

The director denied the petition on October 21, 2009, stating that the petitioner failed to establish that he is eligible for the national interest waiver. The director acknowledged the petitioner's submission of several witness letters, but found that the record did not contain objective, documentary evidence to support the witnesses' claims. The director also found that the petitioner had failed to show that his work is national in scope.

On appeal, counsel asserts: "The record indicates that his skills are so unique that it would not be fair to exempt hi[m] from the labor certification process" (*sic*). Presumably counsel means that it would not be fair *not* to exempt him. Counsel does not explain what in the record supports this conclusion. The vast bulk of the record appears to be little more than the standard work product of a physician/researcher, and such evidence cannot make up in volume what it lacks in significance. Counsel cannot simply make a general reference to the entire record of proceeding and claim that, somewhere in the mass of materials submitted, lies evidence of eligibility.

Counsel states that the petitioner is "able to master many of the most advanced procedures in the field and also to teach those procedures to peers, both junior and senior, thereby creating a ripple effect." The petitioner does not claim to have developed or refined these "advanced procedures" (which counsel does not identify specifically). Learning an existing procedure is not grounds for a waiver. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221.

Counsel argues that, having learned the procedures himself, the petitioner can now teach them to others. Counsel does not explain how this distinguishes the petitioner from countless other medical students who, like the petitioner, take on some teaching duties even while completing their own professional training. Also, by counsel's logic, the credit could just as easily go to the petitioner's teachers as to the petitioner himself. There exists no blanket waiver for physicians with teaching duties.

Counsel claims that the petitioner "possesses . . . abilities that cannot be easily articulated by objective factors appearing in the labor certification process, but that can only be subjectively observed and respected by fellow physicians." As we have already noted, when we compare those letters to the objective evidence in the record, many of the claims in the letters are so inflated as to be unrealistic. Also, the ultimate source of the letters is, itself, in doubt, because witnesses thousands of miles apart have used the same language in supposedly independent letters.

Counsel states: "we are again providing a summary of [the petitioner's] accomplishments in various relevant categories that demonstrate the national impact that his work has had." We can find no such summary in the record.

The objective evidence of record portrays the petitioner as an active and skilled physician, pursuing ongoing professional training in child and adolescent psychiatry. The record does not, however, support the exaggerated claims of counsel and a handful of witnesses attesting to an alleged national reputation and widespread, yet ill-defined, impact in his specialty. We see no credible evidence in the record that would lead us to question the director's findings. We therefore agree with the director's decision to deny the petition.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.